

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LAMONT HEARD,
Plaintiff,

No. 2:05-cv-231

-v-

HONORABLE PAUL L. MALONEY

PATRICIA CARUSO, ET AL.,
Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the court on a report and recommendation issued by the magistrate judge. (ECF No. 348.) Plaintiff timely filed an objection. (ECF No. 365.)

The issue in dispute is whether Plaintiff may maintain his Religious Land Use and Institutionalized Persons Act (RLUIPA) claims against various Defendants in their *individual* capacities. The magistrate judge recommends dismissing those claims. Plaintiff objects. Plaintiff argues individual capacity suits may be justified (1) under the necessary and proper clause, (2) under the commerce clause, (3) as the state official is a third party beneficiary, and (4) because Defendants continue to accept RLUIPA funds. Plaintiff's fifth objection is that, contrary to the report, Plaintiff did not ask this court to overrule *Cardinal v. Metrish*, 564 F.3d 794 (6th Cir. 2009).

Plaintiff's objection is **OVERRULED**. The report and recommendation accurately reflects the law and the reasoning is sound. Plaintiff has presented no evidence that Congress relied upon the necessary and proper clause when it enacted RLUIPA and, at least to this point, no circuit court has ever held that the necessary and proper clause provides a basis for sustaining individual capacity

suits under the RLUIPA. Plaintiff's second, third, and fourth objections are explicitly or implicitly addressed both in the report and in the opinions discussed in the report. Plaintiff's fifth objection does not alter the recommendations contained in the report.

Accordingly, the report and recommendation (ECF No. 348) is **ADOPTED over objections** as the opinion of the court. Plaintiff's claims under RLUIPA for monetary damages against Defendants in their individual capacities are **DISMISSED. IT IS SO ORDERED.**

Date: January 31, 2011

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge